

John T. Morgan (USB #3839)

UNITED STATES DEPARTMENT OF JUSTICE

Office of the United States Trustee

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Attorney for Patrick S. Layng, United States Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

In re:

PERSEON CORPORATION,

Debtor.

Bankruptcy Case No. 16-24435 RKM

(Chapter 11)

Chief Judge R. Kimball Mosier

**UNITED STATES TRUSTEE'S OBJECTION TO DEBTOR'S APPLICATION FOR
ENTRY OF AN ORDER AUTHORIZING RETENTION AND EMPLOYMENT OF
SUNTRUST ROBINSON HUMPHRY, INC. AS INVESTMENT BANKER TO THE
DEBTOR, ASSUMPTION OF THE AGREEMENT WITH SUNTRUST ROBINSON
HUMPHRY TO PROVIDED SERVICES RELATED THERETO AND APPROVING
THE AGREEMENT WITH SUNTRUST, ROBINSON HUMPHREY**

Patrick S. Layng, the Acting United States Trustee for Region 19 ("U.S. Trustee"), by and through his attorney, John T. Morgan, objects to the Debtor's Motion to Retain, Assume the Agreement With and Approve the Agreement with Suntrust Robinson Humphrey, Inc. as the Debtor's Investment Banker and in support thereof represents to the Court as follows:

1. The Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United State Bankruptcy Court for the District of Utah on May 23, 2016.
2. The Debtor remains in possession of its assets and continues to manage its business as a debtor-in-possession pursuant to section 1107 and 1108 of the Bankruptcy Code.

No committee of unsecured creditors has been appointed in this case.
3. On May 17, 2016, the Debtor entered into an Asset Purchase Agreement to sell all of its assets. The bankruptcy case has been proceeding with considerable alacrity in furtherance of finalizing that sale.
4. On June 22, 2016, the Debtor filed an Application (I) Authorizing the Retention and Employment of Suntrust Robinson Humphrey, Inc. ("Suntrust") as Investment Banker to the Debtor, (II) Authorizing the Assumption of the Debtor's Agreement with Suntrust, and (III) Approving the Agreement With Suntrust ("Application").
5. The Debtor's Application seeks approval of an Amended Engagement Letter dated June 14, 2016 between the Debtor and Suntrust which together state that Suntrust was previously paid substantial fees relative to the pre-petition work for the Debtor including a \$75,000 retainer, and \$250,000 for a Fairness Opinion related to a failed merger in 2015. The Amended Engagement Letter provides for payment of a minimum fee of \$700,000 upon the closing of the sale contemplated by the Asset Purchase Agreement in this bankruptcy case. This represents 16% of the gross sales proceeds of the present Stalking Horse bid.

6. The fixed or percentage fee proposed is not reasonable under the presently disclosed facts in this case. The proposed employment and payment should not be approved absent compliance with the provisions of 11 U.S.C. §§ 327 and 328, and a showing that the proposed employment is necessary, in the best interest of the estate, and that the fee is reasonable under the circumstances of this case.

WHEREFORE, the United States Trustee requests that the Application to Employ Suntrust be denied.

DATED: July 11, 2016

Respectfully submitted,

/s/

John T. Morgan
J. Vincent Cameron
Attorneys for Patrick S. Layng,
United States Trustee

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on July 11, 2016, I caused a true and correct copy of the foregoing **UNITED STATES TRUSTEE'S OBJECTION TO DEBTOR'S APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING RETENTION AND EMPLOYMENT OF SUNTRUST ROBINSON HUMPHRY, INC. AS INVESTMENT BANKER TO THE DEBTOR, ASSUMPTION OF THE AGREEMENT WITH SUNTRUST ROBINSON HUMPHRY TO PROVIDED SERVICES RELATED THERETO AND APPROVING THE AGREEMENT WITH SUNTRUST, ROBINSON HUMPHREY** to be electronically filed with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF System as noted below:

- Jeffrey M Armington armington.jeff@dorsey.com, asmus.natasha@dorsey.com, ventrello.ashley@dorsey.com
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Further, I certify that I caused copies of the **OBJECTION** to be forwarded via U.S. Mail, first class, postage prepaid and properly addressed to the following:

Jeffrey Chubak, Esq.
Storch Amini & Munves PC
2 Grand Central Tower
140 East 45th Street, 25th Floor
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_____/s/
John T. Morgan